

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

VS TECHNOLOGIES, LLC,

Plaintiff

vs.

TWITTER, INC.

Defendant.

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CIVIL ACTION NO.:
2:11-cv-00043-HCM-FBS

JURY TRIAL DEMANDED

**PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF ITS MOTION TO STRIKE**

On Friday, September 23, 2011, Defendant Twitter, Inc. ("Twitter") filed its Reply Memorandum and supporting evidence relating to its previously filed Motion for Summary Judgment. Defendant's Reply contains – for the first time – evidence not submitted as part of its Motion for Summary Judgment and therefore, such evidence is untimely and should not be considered for purposes of ruling on the Motion for Summary Judgment, particularly when such evidence was filed less than ten days before the scheduled hearing. (See Exhibits B and E to Twitter's Reply Memorandum).

In addition, Defendant's Reply is replete with statements from a piece of prior art that is blatant hearsay and for which no evidentiary foundation has been laid for the truth of the matters claimed to be asserted therein. Defendant is relying on out-of-court statements listed on web pages that describe the Who's Who Online service. (Twitter's Reply Memorandum at pages 5, 7, 8, 11 and 12). Twitter is offering these statements to prove the truth of the matter asserted, i.e., that the Who's Who Online service worked as described prior to the filing of the patent-in-suit. As such, Plaintiff objects to the use of such hearsay evidence when ruling on the Motion for

Summary Judgment. (Fed. R. Evid. 802).

Conclusion

For the foregoing reasons, Plaintiff respectfully requests that the evidence cited to, relied upon, and submitted in or as part of Defendant's Reply brief be stricken from the summary judgment record.

Dated: September 26, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies, that on this 26th day of September, 2011, a true and correct copy of the foregoing Plaintiff's Memorandum of Points and Authorities in Support of its Motion to Strike was electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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